

In its historic and terrific decision for consumers to uphold competition and protect consumers the Justice Department as this article notes has defined the wireless market as a national market composed of four national post-paid carriers that would be three if AT&T's merger with T Mobil were approved whereas AT&T wanted the market to be defined locally with many competitors. I urge the FCC to also dismiss AT&T's merger.

Analysis H&R Block ruling bodes ill for AT&T: <http://www.reuters.com/article/2011/11/11/us-tmobile-att-antitrust-idUSTRE7AA30Z20111111>

The rejection of tax preparer H&R Block Inc's (HRB.N) planned acquisition of rival TaxACT bodes ill for AT&T Inc (T.N) as it attempts to buy T-Mobile USA, antitrust experts said.

The Justice Department challenged both H&R Block's purchase of TaxACT and AT&T's planned take-over of T-Mobile for \$39 billion. The H&R Block trial came first and the subsequent decision stopping the deal Judge Beryl Howell will be scrutinized by both the Justice Department and AT&T ahead of the trial that begins on February 13.

In a ruling released on Thursday, Judge Howell agreed with the Justice Department that the digital tax preparation market was highly concentrated and that TaxACT was aggressive in holding down prices. She stopped the merger on October 31, but her decision was not released until Thursday after confidential business information was redacted.

H&R Block has not decided yet to appeal the rejection.

Howell agreed with the government that the digital tax preparation market was highly concentrated, with just three major players: Intuit with 62.2 percent of the market, H&R Block with 15.6 percent and TaxACT with 12.8 percent.

Howell rejected H&R Block's argument that the market was wider based on documents provided by the companies.

"The (internal business) documents show that, in connection with a proposed acquisition of TaxACT, HRB identified the proposed transaction as a way to grow its digital 'market share' and has measured TaxACT's market share in a DDIY (digital do-it-yourself) market," Howell wrote.

This is good for the Justice Department, which wants to define wireless as a national market, with AT&T and three other competitors. AT&T says the market as based locally with many competitors.

"The court distinguishes digital do it yourself tax preparation from all different kinds of different tax preparation" because of various technologies, users and methods, said Robert Doyle, a former antitrust enforcer now at Doyle, Barlow and Mazard PLLC. "That is the same argument that can be used to distinguish a local from a national (wireless) market."

The national wireless market has four national competitors. The industry leader is Verizon Wireless, a venture of Verizon Communications Inc (VZ.N) and Vodafone Group Plc (VOD.L). AT&T is now No. 2, but would be vaulted to No. 1 if it buys T-Mobile, now owned by Deutsche Telekom AG (DTEGn.DE). Sprint, the third-largest carrier, bitterly opposes the AT&T buy.

While Howell took issue with TaxACT being described as a price maverick, she agreed the company constrained prices.

"Not only did TaxACT buck prevailing pricing norms by introducing the free-for-all offer, which others later matched, it has remained the only competitor with significant market share to embrace a business strategy that relies primarily on offering high-quality, full-featured products for free with associated products at low prices," she wrote in her ruling.

AT&T, according to the government, was concerned about T-Mobile playing the same role. The government's complaint quotes an AT&T document from January 2010 as saying: "The more immediate threat to AT&T is T-Mobile" and says a network upgrade and other improvements "should be taken seriously."

That said, AT&T General Counsel Wayne Watts argued the two cases were very different.

"The H&R Block case has nothing in common with ours," he said in a statement. "The hyper-competitive wireless industry and the enormous network efficiencies and consumer benefits that result from our merger distinguish our case from any other."

In both cases, Joseph Wayland leads the Justice Department's legal team. The AT&T trial, however, has a different judge: Ellen Huvelle.

Media Access Project, a public interest law firm that has staunchly opposed the AT&T deal, said the decision "bodes well" for the Justice Department, especially because of the emphasis Howell put on TaxACT as a discounter.

"That is precisely what the Department of Justice alleges (about T-Mobile) in the AT&T/T-Mobile case," said Andrew Jay Schwartzman, Media Access Project's policy director.

Evan Stewart, an antitrust expert who believes the government's case against AT&T is strong, said the reasoning behind the H&R Block ruling was good news for the Justice Department.

"The decision underscores the Justice Department's decision to oppose the AT&T deal and probably encourages the department's belief it will receive a favorable judicial review of its case," he said in an email.

Both cases are at the U.S. District Court for the District of Columbia. The H&R Block case is United States of America v. H&R Block, Inc, No. 11-00948. The other is USA v. AT&T, T-Mobile USA Inc and Deutsche Telekom AG, case No. 11-1560.